IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

MFA.No. 1087 of 2000(B)

OPMV.416/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
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APPELLANT/PETITIONER:

GOVINDAN.V., S/O VISWANATHA PRABHU,
KALLADA PARAMBIL, C.C.NO.41/1707,
PEYOLI LANE, CHITTOOR ROAD,
ERNAKULAM, COCHIN - 682 018.

BY ADV. SRI.A.INEES

RESPONDENTS/RESPONDENTS:

1. K.VISHNU KUMAR, S/O KESAVAN UNNI,
INDUMANGALAM, KARUMOM P.O.,
THIRUVANANTHAPURAM (NOW RESIDING
AT QR.NO.614, VSSC, THUMBA, TRIVANDRUM)
REG. OWNER OF SCOOTER KL-01/H 1003.

2. SURESH KUMAR, S/O SASIDHARAN NAIR,
QR.NO.VII/3, ISRO HOUSING COLONY, THUMBA,
THIRUVANANTHAPURAM.

3. THE UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE, 3RD FLOOR, CWC BUILDING,
LMS COMPOUND, THIRUVANANTHAPURAM-33.

R3 BY ADV. SRI.M.S.PATTALI
SRI.T.VINOD KUMAR
R1 & R2 BY ADV. SRI.G.GOPAKUMAR (CHERTHALA)
SRI.VIPIN WARRIER

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 1087 of 2000

JUDGMENT

Koshy, J.

The appellant, a pedestrian, was knocked down by a scooter bearing Reg.No.KL-01/H 1003. Two other pedestrians were also injured in the accident. PW1 as well as PW2 gave evidence before the court that the accident occurred only due to the negligence of the rider of the scooter. No counter evidence was adduced by the respondents. Exhibit A1 shows that the second respondent, rider of the scooter, was charge sheeted for negligent driving. However, based on the scene mahazar dated 27.8.1996, the Tribunal found that the accident occurred two metres away from the side of the road and therefore, the appellant also is negligent, as the road has got a width of 6.43 metres. The accident occurred on 26.8.1996. But, we note that the scene mahazar was prepared only on the next

day. By seeing the position, where the scooter fell down, we cannot determine the exact spot of the accident. Since three pedestrians were involved in the accident and there was a finding that the scooter was riding in a very high speed, we are of the opinion that contributory negligence fixed by the Tribunal, merely on the basis of the scene mahazar, against the appellant is not justified. After investigation, police charge sheeted the scooterist. Evidence of PW1 is not contradicted by any evidence.

2. In the above circumstances, we vacate the finding of contributory negligence against the appellant. The Tribunal has calculated a total amount of Rs.66,350/-. But, 50% was deducted for contributory negligence. As a result of the accident, there was 10% permanent disability. For permanent disability and for loss of earning capacity, the amount calculated was Rs.43,200/-, as it was found that at the time of the accident, he

was getting an amount of Rs.2,400/- per month. He was aged 40 at the time of the accident. 15 was taken as the multiplier. We see no reason to enhance the multiplicand and multiplier adopted by the Tribunal. Since we have vacated the finding of contributory negligence, the appellant is entitled to an additional amount of Rs.33,175/-. The above additional amount should be deposited by the third respondent Insurance Company with 7% interest from the date of application till its deposit.

The appeal is allowed in part.

(J.B.Koshy, Judge)

9th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.1087 of 2000

JUDGMENT

9th July, 2007